

**Review of the Tax Exempt and Government  
Entities Division's Independent Review  
Process**

**February 2004**

**Reference Number: 2004-10-045**



INSPECTOR GENERAL  
for TAX  
ADMINISTRATION

DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

February 25, 2004

MEMORANDUM FOR COMMISSIONER, TAX EXEMPT AND GOVERNMENT  
ENTITIES DIVISION

*Gordon C. Milbourn*

FROM: Gordon C. Milbourn III  
Acting Deputy Inspector General for Audit

SUBJECT: Final Audit Report - Review of the Tax Exempt and Government  
Entities Division's Independent Review Process  
(Audit # 200310029)

This report presents the results of our review of the Tax Exempt and Government  
Entities (TE/GE) Division's Independent Review Process (IRP)

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In summary, TE/GE Division management followed established procedures when  
referring cases to the IRP.

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We recommended the Commissioner, TE/GE Division, prepare and submit for issuance public guidance to reemphasize the IRS' position on political activity and private benefit related to exempt organizations.

Management's Response: TE/GE Division management agreed with our recommendation and will develop and submit to TE/GE Division Counsel and the Department of the Treasury the recommended public guidance. Management's complete response to the draft report is included as Appendix VI.

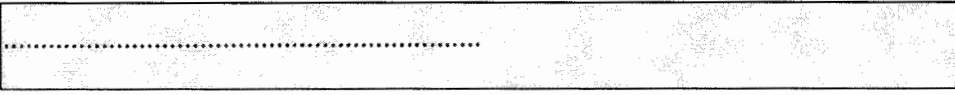

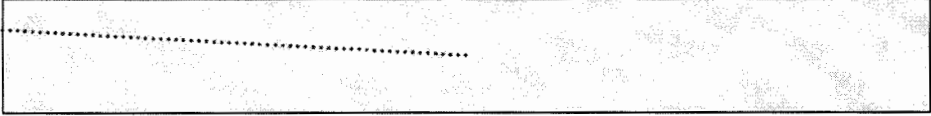
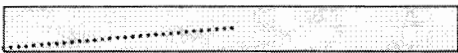
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Please contact me at (202) 622-6510 if you have questions or Daniel R. Devlin, Assistant Inspector General for Audit (Headquarters Operations and Exempt Organizations Programs), at (202) 622-8500.

**Review of the Tax Exempt and Government Entities Division's  
Independent Review Process**

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**Table of Contents**

|  |  |         |
|--|--|---------|
|  | Background .....   | Page 1  |
| (b)(3):26<br>U.S.C. 6103               |  .....   | Page 2  |
| (b)(3):26<br>U.S.C.<br>6103            | The Independent Review Process Was Envisioned As Early As 1999,<br>and  Cases Were Referred for Review Prior to Its Elimination ..... | Page 8  |
| (b)(3):26<br>U.S.C.<br>6103            |  .....   | Page 10 |
|  | <u>Recommendation 1:</u> .....   | Page 13 |
|  | Appendix I – Detailed Objective, Scope, and Methodology .....  | Page 14 |
|  | Appendix II – Major Contributors to This Report .....  | Page 15 |
|  | Appendix III – Report Distribution List .....  | Page 16 |
|  | Appendix IV – Timeline of Key Events .....   | Page 17 |
| (b)(3):26<br>U.S.C. 6103,<br>(b)(7)(C) | Appendix V –  .....   | Page 19 |
|  | Appendix VI – Management's Response to the Draft Report .....  | Page 22 |

**Review of the Tax Exempt and Government Entities Division's  
Independent Review Process**

**Background**

The Tax Exempt and Government Entities (TE/GE) Division's Independent Review Process (IRP) was created to provide TE/GE Division management with an internal mechanism to ensure consistency, fairness, and accuracy related to case processing. The IRP was originally envisioned to provide a structured and fair review of sensitive cases handled by the TE/GE Division (e.g., Exempt Organizations, Employee Plans, Indian Tribal Governments, Tax Exempt Bonds, etc.). Within the TE/GE Division, the Office of the Senior Technical Advisor (STA) was responsible for providing an independent technical review of the cases referred to the IRP.

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This audit was conducted in accordance with *Government Auditing Standards* during the period June through November 2003. The audit was performed by interviewing TE/GE Division management at their Division Headquarters in Washington, D.C., and the Baltimore, Maryland office, and by reviewing documentation related to the creation and subsequent termination of the IRP and the cases referred to the IRP at the time of our review. [REDACTED]

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**Review of the Tax Exempt and Government Entities Division's  
Independent Review Process**

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Detailed information on our audit objective, scope, and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.

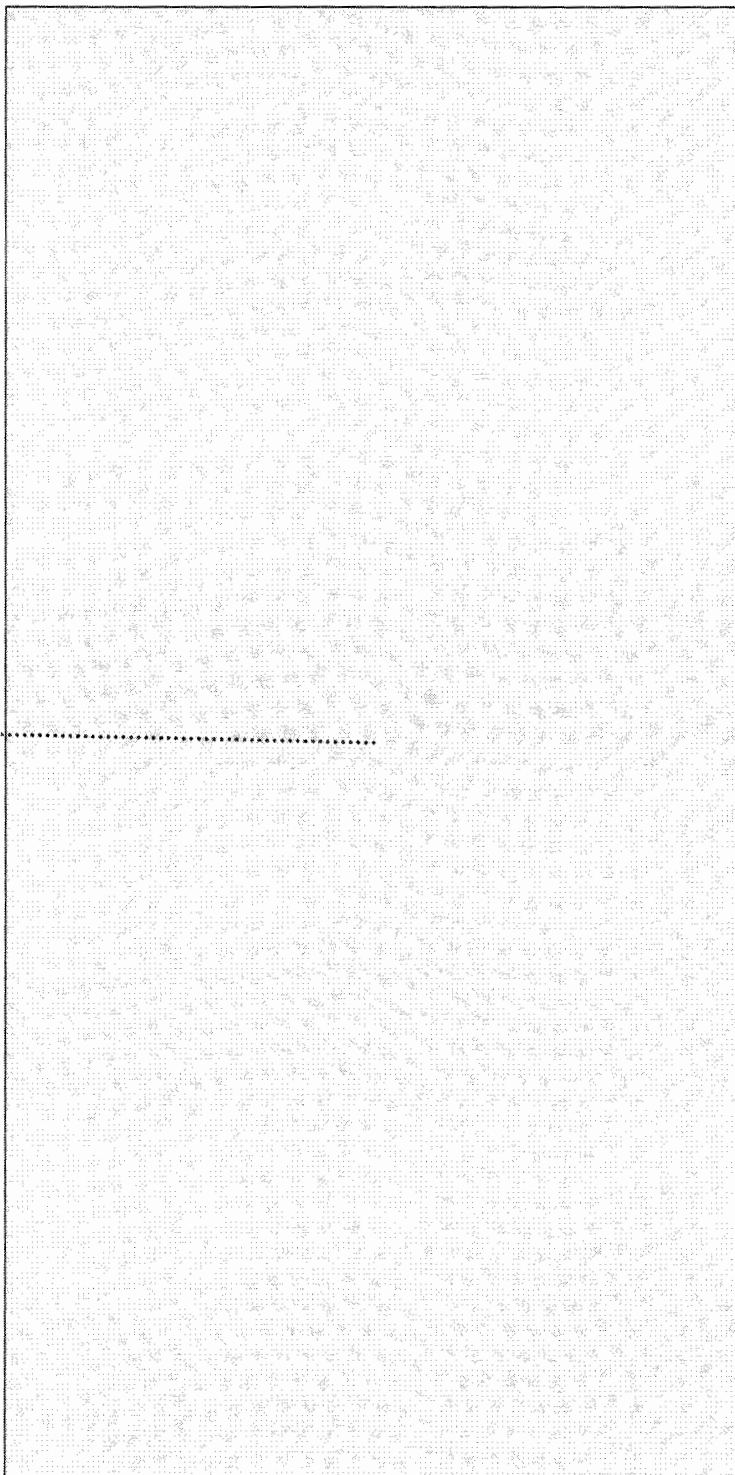
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**Review of the Tax Exempt and Government Entities Division's  
Independent Review Process**

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**Review of the Tax Exempt and Government Entities Division's  
Independent Review Process**

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According to TE/GE Division Counsel management, the current process is that EO issues (including revocation letters) are assigned to field attorneys with experience in those issues and that sensitive or complex issues are to be discussed and coordinated with TE/GE Division Counsel experts in the Headquarters Office. Any disagreements should be elevated to the Assistant Chief Counsel or Division Counsel level, as necessary. Although this process is not a formal procedure, the TE/GE Division Counsel stated this process is reinforced through monthly teleconferences among Division Counsel EO-specialist attorneys and managers in the field and in the Headquarters Office (referred to collectively as "the EO practice



**Review of the Tax Exempt and Government Entities Division's  
Independent Review Process**

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group”), during which employees compare information and discuss technical issues. These teleconferences provide more consistency in working cases and establish the working relationships that will enable better coordination on individual cases. Based on the Division Counsel reorganization and the current practice of assigning work to specialists who coordinate sensitive issues with the Headquarters Office, we are not making a recommendation to address this issue.

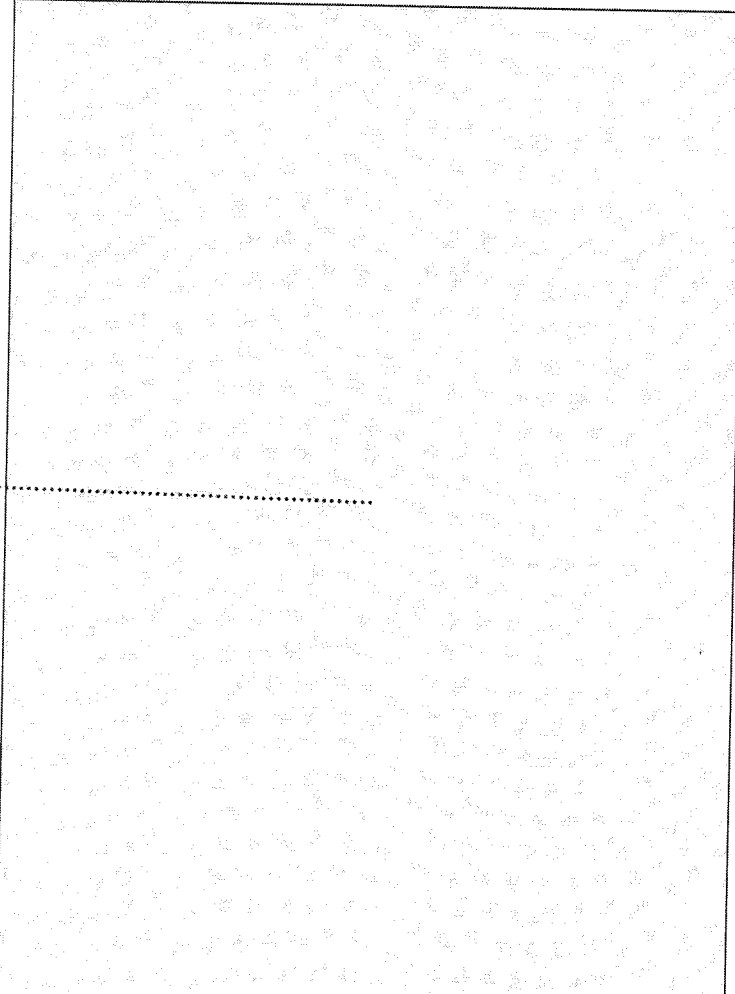
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**Review of the Tax Exempt and Government Entities Division's  
Independent Review Process**

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For any case referred to the IRP, IRS guidelines state the STA will have access to all files, documents, and other materials relating to the case. Generally, the STA may consult with any TE/GE Division employees regarding the development of the case or matter and, if the circumstances warrant, receive submissions and/or hold conferences with third parties, including entities, organizations, or individuals that may be affected by the ultimate disposition of the case. Further, the STA may consult with the TE/GE Division/Associate Chief Counsel regarding Counsel's position in the case or matter or initiate Counsel's consideration of the case or matter if Counsel has not been previously consulted.

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**Review of the Tax Exempt and Government Entities Division's  
Independent Review Process**

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# Review of the Tax Exempt and Government Entities Division's Independent Review Process

**The Independent Review  
Process Was Envisioned As  
Early As 1999, and [REDACTED] Cases  
Were Referred for Review Prior  
to Its Elimination**

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[REDACTED] TE/GE Division management followed established procedures when referring cases to the IRP.

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As early as February 1999, the creation of the IRP was proposed as part of the original plan to create the TE/GE Operating Division. The stand-up<sup>7</sup> of the TE/GE Operating Division was completed in December 1999, but the IRP did not become operational until March 2001 when the position of the STA was filled. According to the Commissioner, TE/GE Division, the position of the STA was not filled until then due to higher priorities related to the stand-up of the TE/GE Operating Division.

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[REDACTED] seemed to indicate the general public did not know the IRP existed or what its role was.

<sup>7</sup> Stand-up is defined as the first day upon which a group or organization begins to operate under a new design.

**Review of the Tax Exempt and Government Entities Division's  
Independent Review Process**

(b)(3):26  
U.S.C. 6103 As stated earlier, the TE/GE Division did not envision the  
IRP to be available to the public; it was for TE/GE Division  
management's use in sensitive cases handled by the TE/GE  
Division. With the exception of the press release issued  
March 14, 2001, announcing the selection of the STA, the  
TE/GE Division has not performed any outreach efforts to  
inform its customers of the IRP.

These factors may have contributed to the public's lack of  
awareness of this process.

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U.S.C. 6103 **Senior TE/GE Division management properly approved  
cases referred for independent review**

TE/GE Division procedures state that cases are to be  
referred to the IRP usually after being elevated to the  
applicable TE/GE Division Director and approved by the  
TE/GE Commissioner or Deputy Commissioner. In unusual  
circumstances, the Commissioner, TE/GE Division, may  
refer a case to the IRP without a request from a Director.

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U.S.C. 6103 We determined TE/GE Division management followed  
established procedures when referring cases to the IRP.  
Since its creation, cases have been referred to the IRP.

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Based upon contacts with  
each of the four TE/GE Division Directors (EP, EO,  
Government Entities, and Customer Account Services), no  
other cases have been recommended to the Commissioner,  
TE/GE Division, for referral to the IRP.

**TE/GE Division management decided to eliminate the  
IRP**

During the fieldwork phase of our review, the  
Commissioner, TE/GE Division, informed senior TIGTA

**Review of the Tax Exempt and Government Entities Division's  
Independent Review Process**

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management of the IRS' decision to eliminate the IRP within the TE/GE Division. This decision was effective August 25, 2003.

TE/GE Division management informed us that the IRP was never intended to be an appellate process for TE/GE Division customers. Instead, it was intended to provide TE/GE Division management with an internal mechanism to ensure consistency, fairness, and accuracy related to case processing. In addition, TE/GE Division management stated the IRP was intended to enhance the public's perception of the fairness and impartiality of the TE/GE Division's processes.

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the Commissioner, TE/GE Division, and the Office of the IRS Commissioner decided to terminate the IRP.

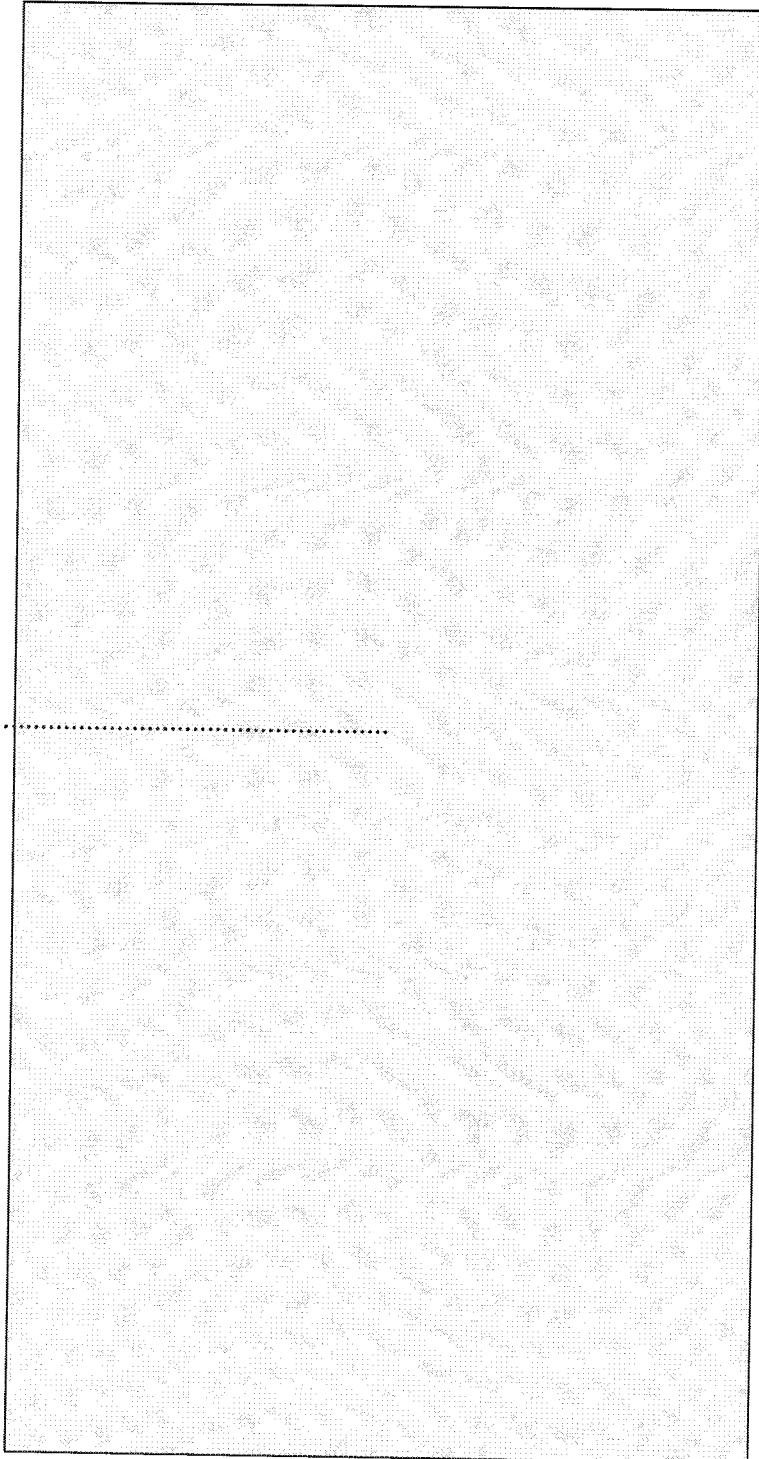
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**Review of the Tax Exempt and Government Entities Division's  
Independent Review Process**

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**Review of the Tax Exempt and Government Entities Division's  
Independent Review Process**

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**Review of the Tax Exempt and Government Entities Division's  
Independent Review Process**

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Considering the current environment and potentially incorrect assumptions about exempt organizations and political activity, there is a need for clarification from the IRS on this matter.

**Recommendation**

1. The Commissioner, TE/GE Division, should prepare and submit for issuance public guidance to reemphasize the IRS' position on political activity and private benefit related to I.R.C. § 501(c)(3) organizations.

Management's Response: TE/GE Division management agreed to develop and submit to TE/GE Division Counsel and the Department of the Treasury the recommended public guidance. TE/GE Division management noted that the issue is difficult and development of appropriate and effective guidance in this area is elusive. Any guidance submitted will require the independent concurrence of TE/GE Division Counsel and the Department of the Treasury.

**Review of the Tax Exempt and Government Entities Division's  
Independent Review Process**

**Appendix I**

**Detailed Objective, Scope, and Methodology**

The overall objective of this review was to evaluate the Tax Exempt and Government Entities (TE/GE) Division's Independent Review Process (IRP)

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We performed the following tests:

- I. Evaluated the use of the IRP within the TE/GE Division.
  - A. Interviewed TE/GE Division personnel and obtained documentation to determine when and why the IRP was established and subsequently terminated.
  - B. Obtained documentation detailing the procedures for the IRP and any actions taken to inform customers of the process.
  - C. Interviewed the four TE/GE Division Directors (Employee Plans, Exempt Organizations, Customer Account Services, and Government Entities) to determine whether they had requested any cases for referral to the IRP that were denied.

- II. Determined whether the TE/GE Division followed established procedures when referring cases to the IRP.

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**Review of the Tax Exempt and Government Entities Division's  
Independent Review Process**

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**Appendix II**

**Major Contributors to This Report**

Daniel R. Devlin, Assistant Inspector General for Audit (Headquarters Operations and Exempt Organizations Programs)  
Nancy Nakamura, Director  
Jeffrey M. Jones, Audit Manager  
Margaret Anketell, Senior Auditor  
Cheryl Medina, Senior Auditor  
Andrew Burns, Auditor

**Review of the Tax Exempt and Government Entities Division's  
Independent Review Process**

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**Appendix III**

**Report Distribution List**

Commissioner C  
Office of the Commissioner - Attn: Chief of Staff C  
Deputy Commissioner for Services and Enforcement SE  
Director, Communications and Liaison, Tax Exempt and Government Entities Division SE:T:CL  
Director, Exempt Organizations, Tax Exempt and Government Entities Division SE:T:EO  
Deputy Chief Financial Officer, Department of the Treasury

**Review of the Tax Exempt and Government Entities Division's  
Independent Review Process**

**Appendix IV**

**Timeline of Key Events**

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| February 1999  | Creation of the Independent Review Process (IRP) is proposed as part of the Tax Exempt and Government Entities (TE/GE) Operating Division design plans. |
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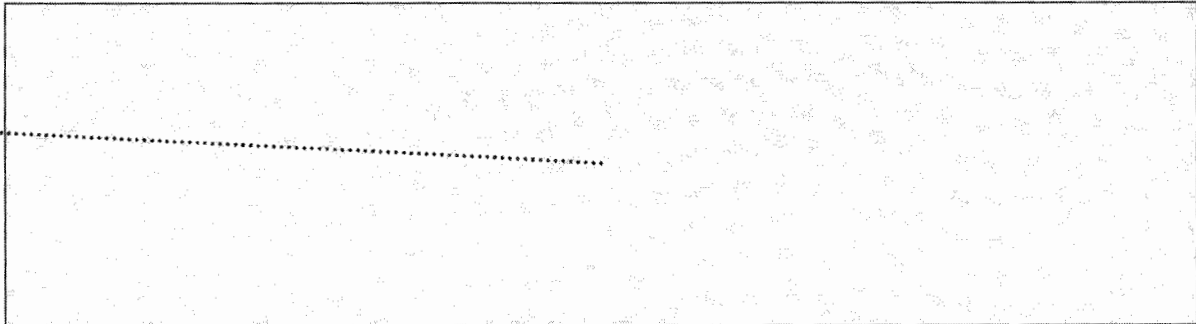
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**Review of the Tax Exempt and Government Entities Division's  
Independent Review Process**

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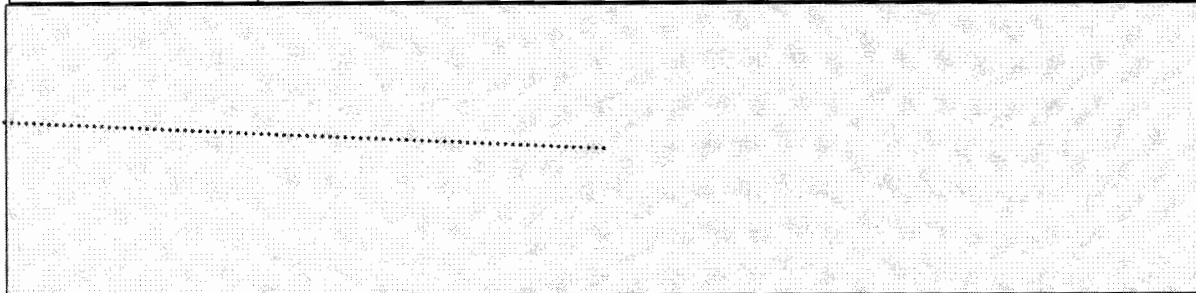
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March 2001

The position of Senior Technical Advisor (STA) is filled by the TE/GE Division.

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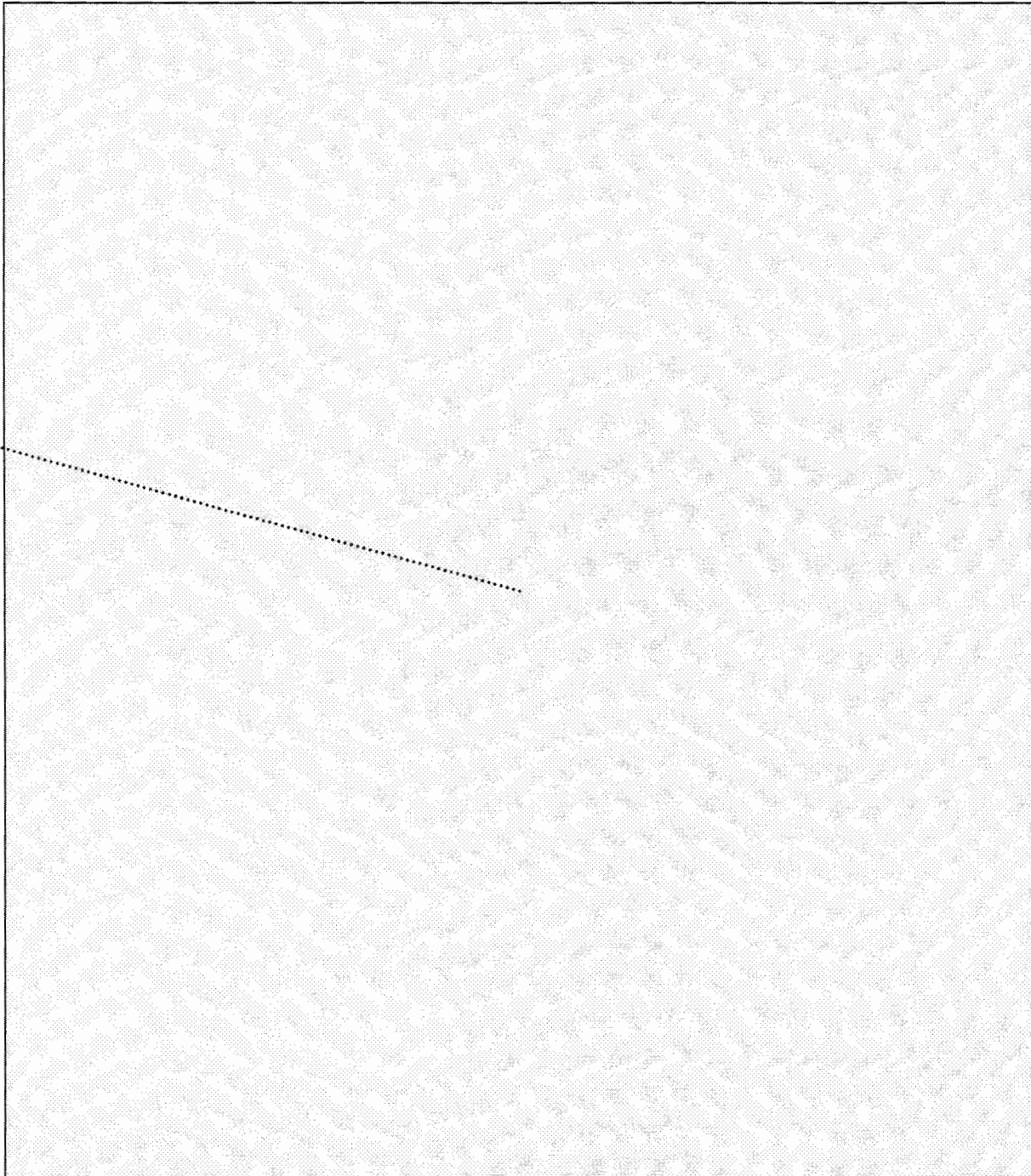


**Review of the Tax Exempt and Government Entities Division's  
Independent Review Process**

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**Appendix V**

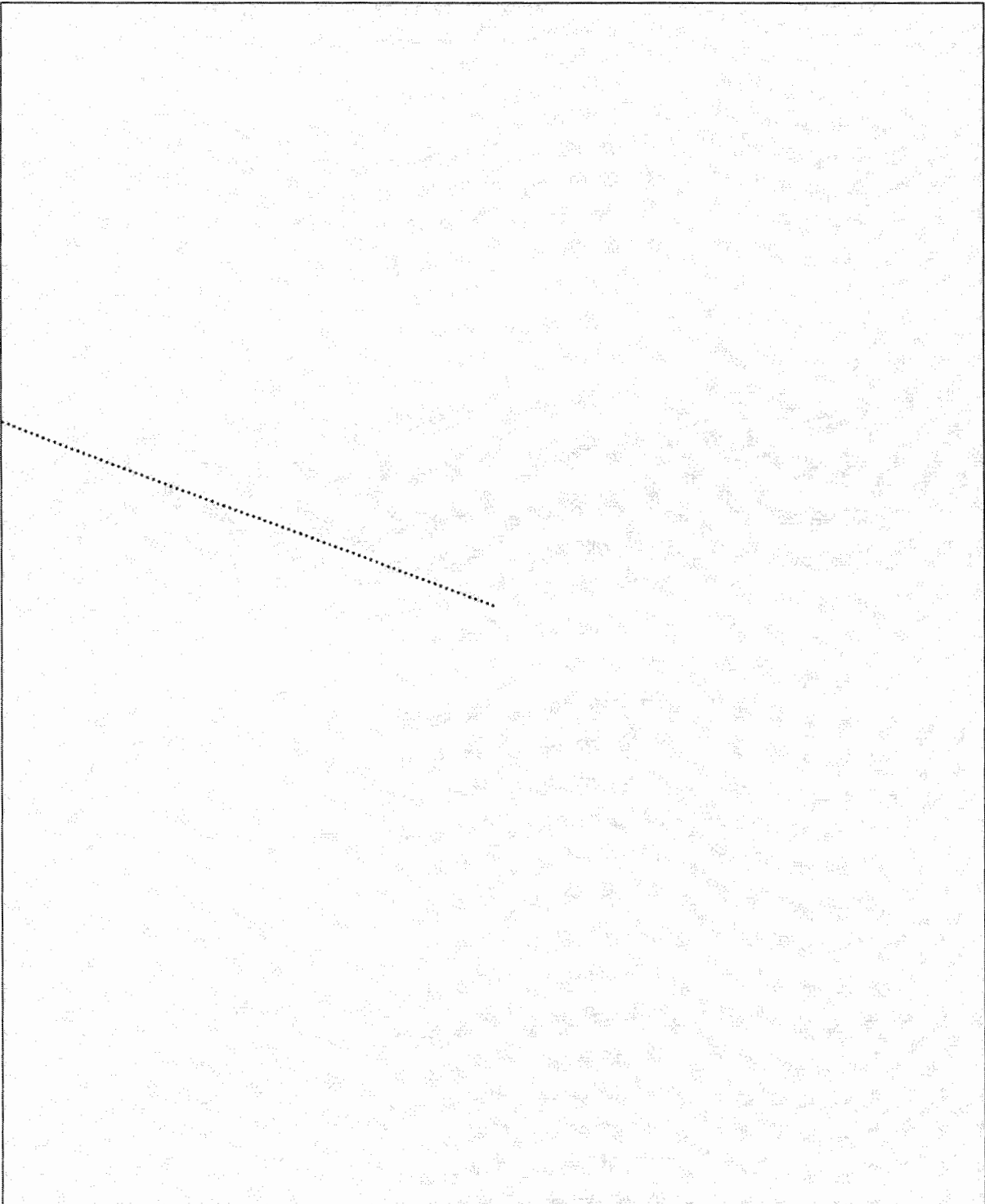
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**Review of the Tax Exempt and Government Entities Division's  
Independent Review Process**

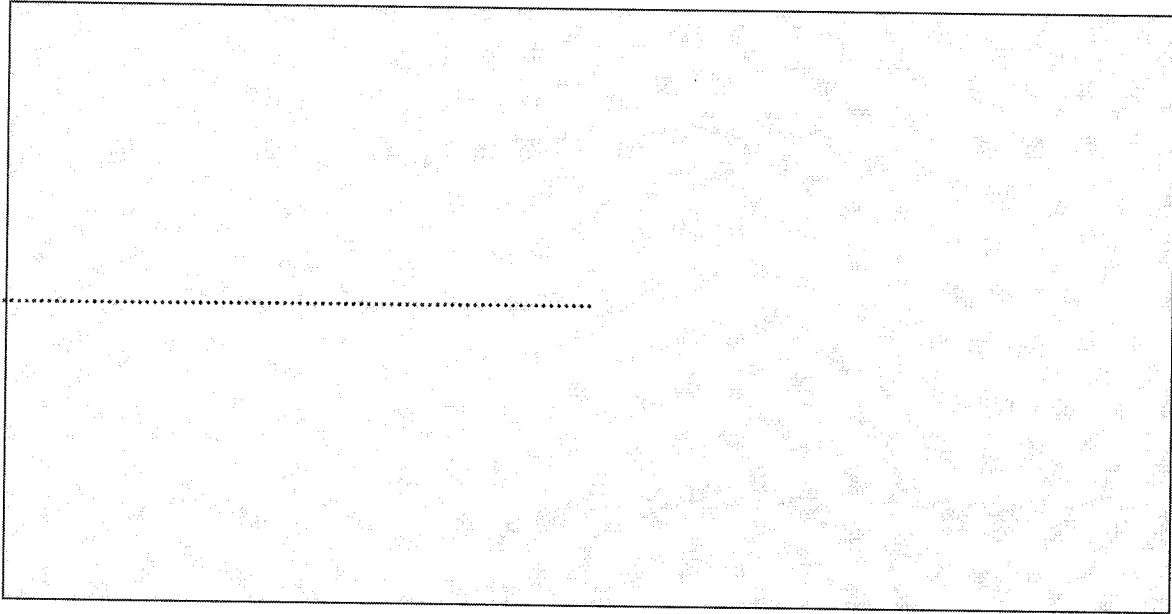
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**Review of the Tax Exempt and Government Entities Division's  
Independent Review Process**



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**Review of the Tax Exempt and Government Entities Division's  
Independent Review Process**

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development of appropriate and effective guidance in this area is elusive. We also note that any guidance we submit will require the independent concurrence of TE/GE Counsel and the Department of the Treasury.

**IMPLEMENTATION DATE**

September 15, 2004

**RESPONSIBLE OFFICIAL**

Director, Exempt Organizations

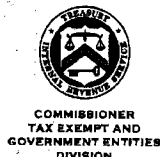
**CORRECTIVE ACTION MONITORING PLAN**

The Director, Exempt Organizations, will report on the development of the guidance at monthly operational reviews with the Commissioner and Deputy Commissioner, TE/GE.

Review of the Tax Exempt and Government Entities Division's  
Independent Review Process

Appendix VI

Management's Response to the Draft Report



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

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MEMORANDUM FOR ACTING DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Evelyn A. Petschek *Evelyn A. Petschek*  
Commissioner, Tax Exempt and Government Entities

SUBJECT: Response to Draft Audit Report: Review of the Tax  
Exempt and Government Entities Division's Independent  
Review Process (Audit 200310029)

At the outset, I would like to thank you and your staff for conducting this audit.

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I am grateful for the thoroughness of your review, and am gratified by the conclusions that you reached. I believe the corrective action you recommended was thoughtful and appropriate. The Tax Exempt and Government Entities Division intends to pursue it, although it may prove difficult for us to implement because the issue is technically hard and we cannot guarantee the concurrence of others who must also approve the guidance we publish.

Our comments on the recommendation follow:

IDENTITY OF RECOMMENDATION

The Commissioner, TE/GE Division, should prepare and submit for issuance public guidance to reemphasize the IRS's position on political activity and private benefit related to Internal Revenue Code section 501(c)(3) organizations.

CORRECTIVE ACTIONS

We will develop and submit to TE/GE Counsel and the Department of the Treasury the recommended public guidance. We note that the issue is difficult, and that the